IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 574 OF 1988.

Shri Narayan Raju Pujari,
Adult, Occupation: Business,
residing at "Sunanda Restaurant"
Kalwa, Tal.& Dist.Thane. .... Appellant.

Versus.

Shri Chennappa T. Naik,
(since deceased through
legal representatives)

1. Smt.Nagamma Chennappa Naik,
   Age: 50 years, Household duties.
2. Laxmikant Chennappa Naik,
   Age: 28 years, Occ.: Business.
3. Chandrakant Chennappa Naik,
   Age: 25 yrs., Occ.: Business.
4. Krishnakumar Chennappa Naik,
   Age: 22 years, Occ.: Nil.
5. Ku.Udaykumar Chennappa Naik,
   Age: 17 years.
6. Bhupendra Chennappa Naik,
   Age 20 years.
7. Kum.Lalita d/o.Chennappa Naik,
   Age: 14 years.

   Nos.5 to 7, minors through their
   G.A.L. mother and natural guardian
   Respondent No.1.
   All residing at Masjid Chawl,
   Near Mamta Cloth Stores, Station
   Road, Kalwa, Thane 605. .... Respondents.

Ms.Nayana Thatte, Advocate holding for Shri R.B.Sule for
the Appellant.

None for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 13th August, 2004.

ORAL JUDGMENT.

1. Heard the learned Advocate appearing for the Appellant. None appears for the Respondents. The Second Appeal was admitted on 6th October 1992. While admitting the appeal this Court observed that whether the Appellant was given the hotel business for conducting or on licence basis is the substantial question of law. I have heard the learned Advocate appearing for the Appellant on the said substantial question of law.

2. With a view to appreciate the submissions made by the learned Advocate appearing for the Appellant, it is necessary to briefly refer the facts of the case. The Appellant is the original Defendant and the Respondent is the original Plaintiff. The case of the Respondent is that he was the sole and absolute owner of the Shri Krishna Tea House and was carrying on the business of selling tea and other eatables. His case is that he is the monthly tenant in respect of the said hotel premises and he has been paying rent in respect thereof to the landlord. It is the case of the Respondent that the Appellant approached him in the year 1974 and requested him to allow him to conduct the business of Shri Krishna Tea House for a period of 11 months commencing from 1st February 1974. The Appellant was permitted to use the

utensils, furniture and fixtures in the premises of Shri Krishna Tea House for conducting the business and the Appellate agreed to pay a sum of Rs.60/- per month by way of royalty to the Respondent. After expiry of the agreed period, the Appellant did not vacate and therefore, Advocate's notice was given by the Respondent to the Appellant revoking the licence granted to the Appellant and calling upon the Appellant to vacate the premises and to hand over possession of the furniture, fixtures and the fittings therein. As the Appellant did not vacate the said premises, the suit for possession was filed.

3. The suit was resisted by the Appellant by denying that the Respondent allowed him to conduct the business. He also denied that he has taken possession of the premises from the Respondent along with furniture and fixtures. The case of the Appellant is that he is running a tea house in the name and style of Sunanda Restaurant since 1st March 1976 which is of his sole ownership. The case of the Appellant is that the case made out by the Respondent in the plaint is completely false.

4. The trial Court framed various issues. The trial Court held that the Respondent was carrying on business of selling tea and other eatables in the suit premises

prior to 1974 and that the Respondent had permitted the Appellant to carry on and conduct the said business with effect from 1st February 1974. Therefore, the trial Court proceeded to pass a decree for possession and arrears of royalty against the Appellant. An appeal was preferred by the Appellant against the decree of the trial Court. By the Judgment and Decree dated 8th September 1988, the learned Addl. District Judge was pleased to dismiss the appeal by confirming the findings recorded by the trial Court.

5. The Appellant has taken exception to the Judgments and Decrees of the Courts below by preferring the present Second Appeal.

6. The learned Advocate appearing for the Appellant submitted that the Courts below have committed error by holding that there was a privity of contract between the Appellant and the Respondent. The further submission of the learned Advocate was that the Respondent failed to prove the case made out in the plaint that he was a tenant of the suit premises and that he was carrying on business of selling tea and eatables in the suit premises any time prior to 1974. The learned Advocate submitted that the findings recorded by the Courts below were perverse and therefore, required to be interfered with in the Second Appeal under section 100 of the Code

of Civil Procedure, 1908.

7. I have considered the submissions made by the learned Advocate for the Appellant. The Appellate Court has considered the oral and documentary evidence on record. The Appellate Court has observed that the case of the Appellant is that from the year 1976 he is conducting the business of Sunanda Restaurant in the suit premises and he had taken the land on which the suit premises are situated from one V.G.Patil, who was the rent collector of landlady Kusum Madgaonkar. The Appellate Court held that no evidence was led by the Appellant to substantiate his contention. In fact the Appellate Court held that it was not at all pleaded by the Appellant in his written statement that he had taken the land with suit premises from the said V.G.Patil and that he was the tenant of the said V.G.Patil. Though no such pleading was made in the written statement, the Appellate Court considered the case made out by the Appellant and found that there was no evidence in support of the said contention.

8. As against this, the Appellate Court found oral evidence of the Respondent very consistent. He produced material on record to show that the said V.G.Patil consented for transferring the lease in respect of the property in favour of the Respondent. The Respondent

produced rent receipts evidencing payment of rent to the said V.G.Patil and the said rent receipts are for the period from 1974 to 1977.

9. The learned trial Judge also found that the case made out by the Respondent is reliable and as against that the Appellant could not lead any evidence to show that he was inducted in the suit premises as a tenant either by the landlady or by her rent collector.

10. If the findings of both the Courts below are examined in the light of the pleadings of the parties and the evidence on record, the view taken by the Courts below is a possible view. All the admissible evidence has been considered by the Courts below and the conclusions are arrived at. Merely because some other view is possible on the basis of the evidence on record is no ground to interfere in the Second Appeal under section 100 of the Code of Civil Procedure, 1908. No perversity or illegality is shown in the findings recorded by both the Courts below. If the Appellant was claiming to be the tenant in respect of the premises in which the business was conducted, it was for him to examine ether the landlady or her Rent Collector. He has not adduced evidence regarding the payment of rent to the landlady. The Respondent has led evidence to show that he was paying the rent and therefore, the

Courts below have accepted the case of the Respondent.

11. There is no reason to interfere in the Second Appeal under section 100 of the said Code. The Second Appeal is dismissed with no order as to costs.

Judge.